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January 23, 2007

Honorable Patti B. Saris
John Joseph Moakley U. S. Courthouse
1 Courthouse Way, Suite 2300
Boston, Massachusetts 02210

Re: In re First Data Bank Markup Litigation

Dear Judge Saris:

The purpose of this letter is to alert you that the undersigned states strongly oppose the class action settlement with First Databank that is currently before you for consideration.

It is not clear to us from the settlement document that individual states' claims are included in the settlement. However, to the extent that states' claims are included, the undersigned states oppose the settlement as being an inappropriate and inadequate remedy.

In addition, we take issue with the injunctive relief set forth in the settlement. The settlement agreement appears to sanction the publishing of a fictitious price whether or not that price is identified as an average wholesale price, a wholesale acquisition cost, "suggested wholesale price" or some other name. In principle, sanctioning that activity is inconsistent with requiring pharmaceutical companies to report the plain meaning of the average wholesale price (AWP). Any published price should be an authentic representation of what it is labeled, and, should purport to be consistent with the plain meaning of its name.

Finally, we strongly oppose the provision empowering First DataBank to terminate the settlement agreement if more than one state Attorney General affirmatively declines its request to provide written assurance of a lack of current interest in prosecuting or filing claims based on the allegations in the Class Action complaint. State Attorneys General are not parties to this litigation. This provision forces individual Attorneys General to express an interest in suing, or not suing, based only on a cursory review of a complaint without having time to conduct any reasonable investigation, or refuse to issue a statement and be blamed for the termination of a settlement that some might contend benefits consumers. We believe this provision is unprecedented and we strongly oppose its inclusion in any settlement to which we are not parties.

FILED
IN CLERKS OFFICE
2007 APR -9 A 11:35
U.S. DISTRICT COURT
DISTRICT OF MASS.

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For the above stated reasons the undersigned states strongly oppose this settlement and find it to be contrary to the interests of states who are working towards transparency in the pharmaceutical pricing system so that states can rely on real prices when negotiating fair prices on behalf of themselves and their consumers.

We'd be happy to discuss our concerns with the court or counsel if you wish.

Sincerely,

The Undersigned States

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